

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

EVELIO CORIA-MADRIGAL,

Defendant.

NO. CR-11-6061-LRS

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

BEFORE THE COURT, is Defendant Coria-Madrigal's Motion to Dismiss, ECF No. 24, filed on October 14, 2011. Oral argument took place on November 3, 2011, at which time the Court took the matter under advisement. The Court held another pretrial conference on November 10, 2011, and the Court ruled on Defendant's pending motion to dismiss. This order is entered to supplement and memorialize the oral ruling of the court.

The Court finds there is insufficient evidence in the record to support the immigration judge's removability finding when the Notice to Appear suggests that a domestic violence conviction may have formed the basis of Defendant's removal. The parties do not dispute that Defendant's 1998 conviction under Pasco Municipal Code § 9.04.030 is not a crime of domestic violence. Further, the Court finds that Pasco Municipal Code

1 § 9.04.030 is overbroad in that it can not be used exclusively to define
2 a "crime of violence" as interpreted under Federal law. Moreover, the
3 Court cannot conclude from the record that the facts supporting the
4 requisite force element conviction meet the requirements of either 18
5 U.S.C. § 16(a) or 16(b).

6 Accordingly,

7 **IT IS HEREBY ORDERED:**

8
9 1. Defendant Coria-Madrigal's Motion to Dismiss Indictment, **ECF**
10 **No. 24**, filed October 14, 2011, is **GRANTED**, for the reasons stated on
11 the record at the November 10, 2011 hearing.

12 2. The U.S. Marshals Service shall immediately either release
13 Defendant from U.S. Marshal custody or if he is subject to an
14 immigration hold, transfer custody to appropriate authority for
15 further proceedings.

16 **IT IS SO ORDERED.** The District Court Executive is directed to
17 enter this order and to provide copies to all counsel.

18 **DATED** this 10th day of November, 2011.

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20 ***s/Lonny R. Suko***

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22 LONNY R. SUKO
23 UNITED STATES DISTRICT JUDGE
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